

PERU

TRADE SUMMARY

In 2000, the U.S. trade deficit with Peru was \$334 million, an increase of \$107 million from the U.S. trade deficit of \$227 million in 1999. U.S. merchandise exports to Peru were approximately \$1.7 billion, a decrease of \$39 million (2.3 percent) from the level of U.S. exports to Peru in 1999. Peru was the United States' 44th largest export market in 2000. U.S. imports from Peru were about \$2 billion in 2000, an increase of \$68 million (3.5 percent) from the level of imports in 1999.

The stock of U.S. foreign direct investment (FDI) in Peru in 1999 was an estimated \$2.5 billion, an increase of 21.3 percent over the 1998 level. U.S. FDI in Peru was principally in the finance, petroleum and manufacturing sectors.

IMPORT POLICIES

Tariffs

Peru's most recent tariff reform went into effect in April 1997, lowering the overall average tariff rate from sixteen to thirteen percent but raising tariffs on agricultural products, including a five percent "temporary" tariff on agricultural goods. Under the current system, a twelve percent tariff applies to more than 95 percent (by value) of goods imported into Peru; a 20 percent tariff applies to most other goods; and a few products are assessed rates (because of the additional "temporary" tariffs) of up to 25 percent.

In addition to the "temporary" tariffs on agricultural goods, Peru has applied another set of variable "temporary" import levies since 1991 on four basic commodities: rice, corn, sugar, and milk products. The Government eliminated a similar surcharge on wheat in 1998. These surcharges are in addition to any applicable tariff. The surcharges are calculated on a weekly basis, according to prevailing international prices for each commodity, rather than the actual price of the commodities entering Peru.

On August 1, 1997, Peru officially rejoined the Andean Community's free trade area (FTA) B from which it had been absent since 1992 B but will not fully participate in the FTA until 2005. However, a large proportion of trade between Peru and the other Andean Community members is already tariff-free, and most of the remaining tariffs will be eliminated by 2002. Peru does not adhere to the community's common external tariff (CET), maintaining its own, flatter tariff structure. As part of the Andean Community, Peru has participated in lengthy negotiations to establish a free trade area with MERCOSUR. On April 16, 1998, the Andean Community signed a framework agreement with MERCOSUR as the first step toward building a South American free trade zone. Although negotiations with MERCOSUR came to a standstill in 1998, the Andean Community concluded a trade liberalization agreement with Brazil that entered into force in Peru in August 1999. This agreement gives preferential treatment for about 98 percent of Peru's exports to Brazil, while 44 percent of Peruvian imports from Brazil were granted preferential treatment. Within the framework of the Latin American

Integration Association (ALADI), Peru has signed bilateral trade agreements with Argentina, Brazil, Chile, Cuba, Mexico, Paraguay and Uruguay. Although tariff concessions under most of these agreements are relatively limited, Peru's 1998 agreement with Chile calls for the elimination of all trade barriers by the year 2016, with most tariffs removed in the next four years.

Non-tariff Measures

Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions and quantitative restrictions, have been eliminated. However, the following imports are banned: several insecticides, fireworks, used clothing (unless donated), used shoes (unless donated), used tires, radioactive waste, cars over five-years old, and trucks over eight years old. Imported used cars and trucks that meet these age limits must pay a 45 percent excise tax B compared to 20 percent for a new car B unless they are refurbished in an industrial center in the south of the country upon entry, in which case they are exempted entirely from the excise tax. Import licenses are required for firearms, munitions and explosives, chemical precursors (since these can be diverted to illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

GOVERNMENT PROCUREMENT

There is no limitation on foreign participation in any government solicitations. U.S. pharmaceutical firms raised concerns in September 2000, regarding the government's practice of automatically adding 15 points (on its rating scale of 100) to Peruvian firms in the bidding process for the Health Ministry's pharmaceutical suppliers. U.S. firms contend that the 15 percent margin is excessive, giving an unfair advantage to Peruvian competitors that would otherwise lose these bids on cost or technical grounds. A U.S. pharmaceutical supplier and a U.S. medical equipment supplier have also alleged instances in which lax implementation of the preference has allowed third-country suppliers of non-Peruvian content products to benefit from the practice. Peru is not a signatory to the WTO Agreement on Government Procurement, however, and does not appear to have any other international obligations that preclude it from awarding such preferences.

EXPORT SUBSIDIES

Peru does not provide any direct payment upon exportation.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Peru belongs to the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). It is also a signatory to the Paris Convention, Berne Convention, Rome Convention, Geneva Phonogram Convention, Satellites Convention, Universal Copyright Convention, and the Film Register Treaty. In April 1999, the U.S. Trade Representative placed Peru on the "Special 301" Priority Watch List.

Since late 1999, the government has been increasingly proactive in promoting and protecting intellectual property rights for domestic and foreign interests. Although

enforcement efforts have increased, piracy remains widespread.

Patents and Trademarks

In April 1996, Peru passed two new laws to improve its intellectual property rights protection regime and bring its national laws into conformity with Andean Community decisions and other international obligations on intellectual property. Although the new laws were an improvement, they contained several deficiencies. The government believes that the Andean Community's September 2000 adoption of Decision 486, which supersedes the previous IPR regime established in Andean Community Decision 344, resolved many of Peru's outstanding discrepancies with the WTO TRIPS Agreement. Nonetheless, there is some question within the Andean Community about whether national law or the Andean Community Decisions on IPR would prevail in the case of conflict between them. Although it had been previously thought that the higher standard would prevail, the Andean Community Secretariat issued rulings in 2000, which determined that Peru violated Decision 344 by issuing "second use" patents. These rulings (Andean Community resolutions 358 and 406) threaten to undermine the ability of member states to implement national laws that are stronger than Andean Community norms.

U.S. pharmaceutical companies are particularly concerned that, in light of resolutions 358 and 406, ambiguities in the new Decision 486 regarding the patent ability of "second use" innovations could undermine the Peruvian government's ability to enforce "second use" patents. They are also concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with market access applications, thereby opening the way to the possible erosion of protections for such information. While Decision 486 brings IPR protection into closer compliance with WTO standards, problems remain with regard to meeting TRIPS obligations. The Decision also remains to be fully implemented in Peru.

Peru's 1996 Industrial Property Rights Law provides an effective term of protection for patents and prohibits devices that decode encrypted satellite signals, along with other improvements. Peruvian law does not provide for "pipeline" protection for patents or protection from parallel imports. Although Peruvian law provides for effective trademark protection, counterfeiting of trademarks and imports of pirated merchandise are widespread.

Copyrights

Peru's Copyright Law is generally consistent with the TRIPS Agreement. However, textbooks, books on technical subjects, audiocassettes, motion picture videos and software are widely pirated. While the government, in coordination with the private sector, has conducted numerous raids over the last few years on large-scale distributors and users of pirated goods and has increased other types of enforcement, piracy continues to be a significant problem for legitimate owners of copyrights in Peru.

SERVICES BARRIERS

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, concluded in March 1997, Peru made commitments on all basic telecommunications services, with full market access and national treatment to be provided as of June 1999. Advancing that timetable by almost a year, the government and the dominant telecommunications services provider reached agreement to end the monopoly of the former state-owned telephone companies as of August 1, 1998. Peru is continuing the process of developing a competitive telecommunications market, and on January 1, 2001, lowered its interconnection rates for most types of telephones. However, concerns remain about the strength of the government regulatory body to oversee the sector and monitor the former monopoly. The U.S. Government is monitoring this situation very closely and expects that Peru will abide by its WTO obligations and strengthen the capacity of the independent telecoms regulator to promote competition and police market abuses.

Professional Services

The government system of assigning audits to state-owned enterprises prevents firms from serving as recurring auditors and from providing non-audit services (consulting) to the companies they audit. International accounting firms cannot practice under their international names. With respect to construction and engineering, 80 percent of employees for government contracts must be nationals. Foreign construction firms must form a joint venture with a local partner for entry into Peru's market. Foreign lawyers cannot provide legal consulting services on home country or international law without being licensed in the practice of Peruvian law.

INVESTMENT BARRIERS

National treatment for foreign investors is guaranteed under Peru's 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries.

Arbitration is a constitutionally guaranteed alternative to the courts, although in one case now pending, a U.S. engineering firm is having difficulty in persuading a government entity to accept arbitration in lieu of a judicial proceeding, as stipulated as an option in its contract.

Peru has notified the WTO of certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The measures deal with local content requirements in the milk and milk products sector. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Although Peru no longer applies these measures in practice and the government was to have formally eliminated the measures before January 1, 2000, the measures have not yet been formally eliminated. The United States is working in the WTO to ensure that WTO members meet these obligations.

ANTI-COMPETITIVE PRACTICES

In the last few years of the Fujimori Administration, interference in some markets increased. The Peruvian Government used the state-owned refinery and wholesaler to

keep fuel prices artificially low in 2000. U.S. firms in the electricity generation and distribution sector believed the government was changing regulatory processes to favor state-owned generators and distributors. U.S. firms have complained about the government's practice of supplementing military wages through gasoline rations. These rations are often sold to informal wholesalers who undercut private wholesalers. Components of the military compete in a number of other sectors (road construction, air transport and maintenance), generally undercutting private suppliers. Finally, U.S. telecommunications firms have complained that Peruvian Government regulatory oversight has been insufficient, allowing the former monopoly provider, owned by Spain's Telefonica, to engage in unfair practices that hinder competition.

The interim government that took office in November 2000, has been receptive to U.S. company complaints and has undertaken to address a number of these issues.

ELECTRONIC COMMERCE

The Peruvian Government is moving to put in place legislation that will facilitate electronic commerce. It has already passed laws giving legal status to digital signatures, creating a framework for electronic contracts, and making it illegal to tamper with, destroy or interfere with computer systems or data.

OTHER BARRIERS

Among the most significant barriers to trade and investment in Peru is the weakness of government institutions. U.S. firms continue to complain that executive branch ministries, regulatory agencies and the judiciary lack the resources, expertise and independence necessary to carry out their respective duties. Peru's weak judicial sector, which is subject to influence by both the government and private sector actors, is a particular problem. Commercial disputes that end up in the Peruvian judicial system often languish, may be tried in competing jurisdictions and have unpredictable outcomes that often bear little relation to Peruvian law. The interim government has begun to address institutional weaknesses in the executive branch and has indicated that it plans to lay the foundation for judicial reforms by the government that will take office in July 2001.